No. 17-1272

In the Supreme Court of the United States

HENRY SCHEIN, INC., ET AL., PETITIONERS

v.

ARCHER AND WHITE SALES, INC.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOINT APPENDIX
(VOLUME 1; PAGES 1-117)

KANNON K. SHANMUGAM
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
kshanmugam@wc.com
Counsel of Record
for Petitioners

LEWIS T. LECLAIR
McKool Smith, P.C.
300 Crescent Court,
Suite 1500
Dallas, TX 75201
lleclair@mckoolsmith.com
Counsel of Record
for Respondents

PETITION FOR A WRIT OF CERTIORARI FILED: MARCH 9, 2018
CERTIORARI GRANTED: JUNE 25, 2018

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The following opinions, decisions, judgments, and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for certiorari as follows:

Appendix A:	Court of appeals opinion, Dec. 21, 2017
Appendix B:	District court memorandum opinion, Dec. 7, 2016
Appendix C:	Magistrate judge memorandum order, May 28, 2013
Appendix D:	Court of appeals order, Dec. 21, 2017

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-41674

ARCHER AND WHITE SALES, INCORPORATED,
Plaintiff-Appellee,

v.

HENRY SCHEIN, INCORPORATED,
Defendant-Appellant.

DOCKET ENTRIES

DATE	PROCEEDINGS
12/14/2016	PRIVATE CIVIL FEDERAL CASE docketed. NOA filed by Appellants Danaher Corporation, Dental Equipment L.L.C., Dental Imaging Technologies, Corporation, Instrumentarium Dental Incorporation and KaVo Dental Technologies, L.L.C. [16-41674] (LCA)
	* * * * *
02/01/2017	OPPOSED JOINT STIPULATION filed by Appellant Henry Schein, Incorporated, and Appellants Danaher Corporation, Dental Equipment, L.L.C., Dental

	Imaging Technologies, Corporation, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C. for stay pending appeal [8415466-2]. Date of Service: 02/01/2017. Response/Opposition due on 02/13/2017. [16-41674] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION filed by Appellants Danaher Corporation, Dental Equipment, L.L.C., Dental Imaging Technologies, Corporation, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C. *and Henry Schein* to stay district court proceedings [8415466-2]. Date of service: 02/01/2017 via email - Attorney for Appellants: Chuck Fontecilla, Kruse, Ondeck, Pitt, Schuster, Timms; Attorney for Appellees: Brumbaugh, Pope [16-41674] (Layne E. Kruse)
02/01/2017	EXHIBITS IN SUPPORT of motion for stay pending appeal [8415466-2] filed by Appellants Danaher Corporation, Dental Equipment, L.L.C., Dental Imaging Technologies, Corporation, Henry Schein, Incorporated, Instrumentarium Dental, Incorpo-

	ration and KaVo Dental Technologies, L.L.C. Date of Service: 02/01/2017 [16-41674] (CAG)
02/10/2017	ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? No. Electronic ROA deadline satisfied. [16-41674] (MRB)
	* * * * *
02/13/2017	RESPONSE/OPPOSITION filed by Archer and White Sales, Incorporated [8423713-1] to the motion for stay pending appeal filed by Appellants Danaher Corporation, Instrumentarium Dental, Incorporation, Dental Equipment, L.L.C., KaVo Dental Technologies, L.L.C., Dental Imaging Technologies, Corporation and Henry Schein, Incorporated in 16-41674 [8415466-2]. Response/Opposition deadline satisfied. Date of Service: 02/13/2017. [16-41674] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Archer and White Sales, Incorporated [8423713-1] to the motion for stay pending appeal filed by Appellants Danaher Corporation, Instrumentarium Dental, Incorporation, Dental Equipment,

	L.L.C., KaVo Dental Technologies, L.L.C., Dental Imaging Technologies, Corporation and Henry Schein, Incorporated in 16-41674 [8415466-2] Date of Service: 02/13/2017 via email - Attorney for Appellants: Chuk, Fontecilla, Kruse, On for Appellees: Brumbaugh, Pope. [16-41674] (Kay Lynn Brumbaugh)
02/13/2017	EXHIBITS IN SUPPORT of response/opposition [8423713-2] and White Sales, Incorporated. Date of Service: 02/13/2017 [16-41674] (CAG)
02/15/2017	REPLY filed by Appellants Danaher Corporation, Dental Equipment, L.L.C., Dental Imaging Technologies, Corporation, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C. *and Henry Schein, Inc.* [8427337-1] to the response/opposition filed by Appellee Archer and White Sales, Incorporated in 16-41674 [8423713-2]. Date of Service: 02/15/2017 via email - Attorney for Appellants: Chuk, Fontecilla, Kruse, Ondeck, Pitt, Schuster, Timms; Attorney for Appellees: Brumbaugh, Pope. [16-41674] (Layne E. Kruse)
02/21/2017	LETTER filed referencing motion for stay pending appeal filed

by Appellants Danaher Corporation, Instrumentarium Dental, Incorporation, Dental Equipment, L.L.C., KaVo Dental Technologies, L.L.C., Dental Imaging Technologies, Corporation and Henry Schein, Incorporated in 16-41674 [8415466-2]. [16-41674] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellants Danaher Corporation, Dental Equipment, L.L.C., Dental Imaging Technologies, Corporation, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C. Date of Service: 02/21/2017 via email - Attorney for Appellants: Chuk, Fontecilla, Kruse, Ondeck, Pitt, Schuster, Timms; Attorney for Appellees: Brumbaugh, Pope [16-41674] (Layne E. Kruse)

02/23/2017 LETTER filed by Archer and White Sales, Incorporated in response to letter filed by Appellants Danaher Corporation, Instrumentarium Dental, Incorporation, Dental Equipment, L.L.C., KaVo Dental Technologies, L.L.C. and Dental Imaging Technologies, Corporation in 16-

41674 [8431301-2]. [16-41674] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Archer and White Sales, Incorporated [8433381-1] to the 28j letter filed by Appellants Danaher Corporation, Instrumentarium Dental, Incorporation, Dental Equipment, L.L.C., KaVo Dental Technologies, L.L.C. and Dental Imaging Technologies, Corporation in 16-41674 [8431301-2] Date of Service: 02/23/2017 via email - Attorney for Appellants: Chuk, Fontecilla, Kruse, Ondeck, Pitt, Schuster, Timms; Attorney for Appellees: Brumbaugh, Pope. [16-41674] (Cameron Phair Pope)

02/24/2017 COURT ORDER carrying with the case motion for stay pending appeal filed by Appellants Danaher Corporation, Instrumentarium Dental, Incorporation, Dental Equipment, L.L.C., KaVo Dental Technologies, L.L.C., Dental Imaging Technologies, Corporation and Henry Schein, Incorporated [8415466-2]; [8434561-2] Judge(s): JES, JLD and LHS. [16-41674] (AS)

02/24/2017 COURT DIRECTIVE ISSUED expediting briefing. Appellants'

brief adjusted to be due 03/17/2017. Appellee's brief is due 4/11/17. Any reply would be due 4/21/17. [8434610-2] [16-41674] (AS)

* * * * *

03/17/2017 APPELLANT'S BRIEF FILED # of Copies Provided: 0 A/Pet's Brief deadline satisfied. Paper Copies of Brief due on 03/27/2017 for Appellants Danaher Corporation, Dental Equipment, L.L.C., Dental Imaging Technologies, Corporation, Henry Schein, Incorporated, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C.. [16-41674] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S BRIEF FILED by Danaher Corporation, Dental Equipment, L.L.C., Dental Imaging Technologies, Corporation, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C.. *and by Henry Schein, Inc.* Date of service: 03/17/2017 via email - Attorney for Appellants: Chuk, Fontecilla, Kruse, Ondeck, Pitt, Schuster, Timms; Attorney for Appellees: Brumbaugh, Pope [16-41674] (Jonathan Bradley Pitt)

03/17/2017	RECORD EXCERPTS FILED. # of Copies Provided: 0 Paper Copies of Record Excerpts due on 03/27/2017 for Appellants Danaher Corporation, Dental Equipment, L.L.C., Dental Imaging Technologies, Corporation, Henry Schein, Incorporated, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C.. [16-41674] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellants Danaher Corporation, Dental Equipment, L.L.C.,Dental Imaging Technologies, Corporation, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C.. *and by Henry Schein, Inc.* Date of service: 03/17/2017 via email - Attorney for Appellants: Chuk, Fontecilla, Kruse, Ondeck, Pitt, Schuster, Timms; Attorney for Appellees: Brumbaugh, Pope [16-41674] (Jonathan Bradley Pitt)

* * * * *

04/11/2017	APPELLEE'S BRIEF FILED # of Copies Provided: 0 E/Res's Brief deadline satisfied. Paper Copies of Brief due on 04/17/2017 for Appellee Archer and White

Sales, Incorporated. [16-41674] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by Archer and White Sales, Incorporated. Date of service: 04/11/2017 via email - Attorney for Appellants: Chuk, Fontecilla, Govett, Kruse, Montgomery, Ondeck, Pitt, Schuster, Timms; Attorney for Appellees: Brumbaugh, Pope [16-41674] (Kay Lynn Brumbaugh)

* * * * *

04/21/2017 APPELLANT'S REPLY BRIEF FILED # of Copies Provided: 0 Reply Brief deadline satisfied. Paper Copies of Brief due on 05/01/2017 for Appellants Danaher Corporation, Dental Equipment, L.L.C., Dental Imaging Technologies, Corporation, Henry Schein, Incorporated, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C. [16-41674] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S REPLY BRIEF FILED by Danaher Corporation, Dental Equipment, L.L.C., Den-

tal Imaging Technologies, Corporation, Instrumentarium Dental, Incorporation and KaVo Dental Technologies, L.L.C.. *and Henry Schein, Inc.* Date of service: 04/21/2017 via email - Attorney for Appellants: Chuk, Fontecilla, Govett, Kruse, Montgomery, Ondeck, Pitt, Schuster, Timms; Attorney for Appellees: Brumbaugh, Pope [16-41674]
(Liam James Montgomery)

* * * * *

06/07/2017 ORAL ARGUMENT HEARD before Judges Higginbotham, Graves, Higginson. Arguing Person Information Updated for: Lewis T. LeClair arguing for Appellee Incorporated Archer and White Sales; Arguing Person Information Updated for: Jonathan Bradley Pitt arguing for Appellant Danaher Corporation, Appellant L.L.C. Dental Equipment, Appellant Corporation Dental Imaging Technologies, Appellant Incorporation Instrumentarium Dental AND Appellant Kavo Dental Technologies, L.L.C., Appellant Henry Schein, Incorporated [16-41674] (KMP)

* * * * *

12/21/2017	COURT ORDER denying Motion for stay pending appeal filed by Appellants Danaher Corporation, Instrumentarium Dental, Incorporation, Dental Equipment, L.L.C., KaVo Dental Technologies, L.L.C., Dental Imaging Technologies, Corporation and Henry Schein, Incorporated [8415466-2] Judge(s): PEH, JEG and SAH. [16-41674] (JMA)
12/21/2017	PUBLISHED OPINION FILED. [16-41674 Affirmed] Judge: PEH, Judge: JEG, Judge: SAH. Mandate issue date is 01/12/2018 [16-41674] (This opinion includes URL material that is archived by the Fifth Circuit Court of Appeals Library, and made available at http://www.lb5.uscourts.gov/ArchivedURLS/.) (JMA)
12/21/2017	JUDGMENT ENTERED AND FILED. [16-41674] (JMA)

* * * * *

01/12/2018	MANDATE ISSUED. Mandate issue date satisfied. [16-41674] (CAG)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
(MARSHALL)

No. 2:12-cv-00572-JRG

ARCHER AND WHITE SALES, INC.,
Plaintiff,

v.

HENRY SCHEIN, INC., ET AL.,
Defendants.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
08/31/2012	1	COMPLAINT against All Defendants (Filing fee $ 350 receipt number 0540-3760981.), filed by Archer and White Sales, Inc.. (Attachments: # 1 Civil Cover Sheet) (Beane, Jerry) (Entered: 08/31/2012)
		* * * * *
09/26/2012	10	MOTION to Compel Arbitration and Stay All Proceedings by Danaher Corporation, Dental Equipment LLC, Dental Imaging Technologies, Corporation, Instrumentarium Dental Inc., KaVo

		Dental Technologies, LLC. (Attachments: # 1 Exhibit Declaration of James Weingarten, # 2 Exhibit Ex. A to Declaration, # 3 Exhibit Ex. B to Declaration, # 4 Text of Proposed Order Proposed Order) (Kruse, Layne) (Attachment 4 (Proposed Order) replaced on 9/27/2012) (sm,). Modified on 9/27/2012 (sm,). (Entered: 09/26/2012)
		* * * * *
10/01/2012	14	MOTION to Compel *Plaintiff to Arbitrate and to Stay Proceedings* by Henry Schein, Inc.. (Attachments: # 1 Text of Proposed Order) (Schuster, Paul) (Entered: 10/01/2012)
		* * * * *
10/12/2012	21	RESPONSE in Opposition re 10 MOTION to Compel *Arbitration and Stay All Proceedings [Plaintiff Archer and White Sales, Inc.'s Response in Opposition to Manufacturer Defendants' Motion to Compel Arbitration and Stay All Proceedings] filed by Archer and White Sales, Inc.*. (Attachments: # 1 Affidavit Declaration of Kay Lynn Brumbaugh, # 2 Exhibit 1 to Declaration, #3 Exhibit 2 to Declaration) (Beane, Jerry) (Entered: 10/12/2012)

10/16/2012	22	RESPONSE in Opposition re 14 MOTION to Compel *Plaintiff to Arbitrate and to Stay Proceedings [Plaintiff Archer and White Sales, Inc.'s Response in Opposition to Defendant Henry Schein, Inc.'s Motion to Compel Plaintiff to Arbitrate and to Stay All Proceedings] filed by Archer and White Sales, Inc.* (Beane, Jerry) (Entered: 10/16/2012)
		* * * * *
10/22/2012	24	REPLY to Response to Motion re 10 MOTION to Compel *Arbitration and Stay All Proceedings filed by Danaher Corporation, Dental Equipment LLC, Dental Imaging Technologies, Corporation, Instrumentarium Dental Inc., KaVo Dental Technologies, LLC.* (Attachments: # 1 Exhibit C, # 2 Exhibit D, #3 Exhibit E, # 4 Exhibit F, # 5 Exhibit G) (Kruse, Layne) (Entered: 10/22/2012)
		* * * * *
10/26/2012	31	REPLY to Response to Motion re 14 MOTION to Compel *Plaintiff to Arbitrate and to Stay Proceedings filed by Henry Schein, Inc.*. (Schuster, Paul) (Entered: 10/26/2012)

* * * * *

10/29/2012	33	SUR-REPLY to Reply to Response to Motion re 10 MOTION to Compel *Arbitration and Stay All Proceedings [Plaintiff Archer and White Sales, Inc.'s Sur-Reply in Opposition to Manufacturer Defendants' Motion to Compel Arbitration and Stay All Proceedings] filed by Archer and White Sales, Inc.*. (Beane, Jerry) (Entered: 10/29/2012)

* * * * *

11/05/2012	37	SUR-REPLY to Reply to Response to Motion re 14 MOTION to Compel *Plaintiff to Arbitrate and to Stay Proceedings [Plaintiff Archer and White Sales, Inc.'s Sur-Reply in Opposition to Defendant Henry Schein, Inc.'s Motion to Compel Arbitration and to Stay All Proceedings] filed by Archer and White Sales, Inc.*. (Beane, Jerry) (Entered: 11/05/2012)

* * * * *

02/28/2013	41	Minute Entry for proceedings held before Magistrate Judge Roy S. Payne: Motion Hearing held on 2/28/2013 re Motions to Compel Arbitration 10 and 14 . (Court Reporter Sunbelt Reporting.) (jml) (Entered: 02/28/2013)

* * * * *

05/28/2013	44	ORDER, granting 10 MOTION to Compel *Arbitration and Stay All Proceedings* filed by Dental Equipment LLC, KaVo Dental Technologies, LLC, Instrumentarium Dental Inc., Dental Imaging Technologies, Corporation, Danaher Corporation, granting 14 MOTION to Compel *Plaintiff to Arbitrate and to Stay Proceedings* filed by Henry Schein, Inc. This action is stayed pending arbitration of the claims asserted herein. All parties are directed to notify the Court when the arbitration process is complete or if it has been abandoned. Signed by Magistrate Judge Roy S. Payne on 5/28/13. (mrm,) *****VACATED per 63 Memorandum Opinion and Order on 12/7/2016*****(jml). (Entered: 05/28/2013)
06/10/2013	45	MOTION for Reconsideration re 44 Order Staying Case[Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order] by Archer and White Sales, Inc.. (Attachments: # 1 Text of Proposed Order) (Beane, Jerry) (Entered: 06/10/2013)
06/20/2013	46	RESPONSE in Opposition re 45 MOTION for Reconsideration re

		44 Order Staying Case. Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order] MOTION for Reconsideration re 44 Order Staying Case, *[Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order] Manufacturer Defendants' Memorandum in Opposition to Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order (Dkt. #44) filed by Danaher Corporation, Dental Equipment LLC, Dental Imaging Technologies, Corporation, Instrumentarium Dental Inc., KaVo Dental Technologies, LLC.* (Attachments: # 1 Exhibit Exhibits to Manufacturer Defendants' Memorandum in Opposition to Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order (Dkt. #44)) (Pitt, Jonathan) (Entered: 06/20/2013)
06/20/2013	47	RESPONSE in Opposition re 45 MOTION for Reconsideration re 44 Order Staying Case, Terminate Motions, , , , *[Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order]* MOTION for Reconsideration re 44 Order

Staying Case, Terminate Motions, , , , *[Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order] filed by Henry Schein, Inc.*. (Attachments: # 1 Schuster Declaration, # 2 Exhibit A, # 3 Text of Proposed Order) (Schuster, Paul) (Entered: 06/20/2013)

06/27/2013	48	REPLY to Response to Motion re 45 MOTION for Reconsideration re 44 Order Staying Case, Terminate Motions, , , , *[Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order]* MOTION for Reconsideration re 44 Order Staying Case, Terminate Motions, , , , *[Plaintiff's Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order] [Plaintiff's Reply in Support of Motion for Reconsideration of Magistrate Judge's May 28, 2013 Memorandum Order (DKT #44)] filed by Archer and White Sales, Inc.*. (Beane, Jerry) (Entered: 06/27/2013)

* * * * *

07/03/2013	51	SUR-REPLY to Reply to Response to Motion re 45 MOTION for Reconsideration re 44 Order Staying Case, filed by Danaher

		Corporation, Dental Equipment LLC, Dental Imaging Technologies, Corporation, Instrumentarium Dental Inc., KaVo Dental Technologies, LLC. (Pitt, Jonathan) (Entered: 07/03/2013)
07/03/2013	52	SUR-REPLY to Reply to Response to Motion re 45 MOTION for Reconsideration re 44 Order Staying Case, filed by Henry Schein, Inc.. (Schuster, Paul) (Entered: 07/03/2013)
		* * * * *
11/09/2016	61	ORDER VACATING REFERRAL OF PRETRIAL MATTERS. Signed by Judge Rodney Gilstrap on 11/8/2016. (nkl,) (Entered: 11/09/2016)
11/09/2016	62	Minute Entry for proceedings held before Judge Rodney Gilstrap: Status Conference held on 11/9/2016. (Court Reporter Shelly Holmes, CSR-TCRR.) (Attachments: # 1 Attorney Attendance Sheet) (jml) (Entered: 11/09/2016)
12/07/2016	63	MEMORANDUM AND OPINION-- It is therefore ORDERED that the Magistrate Judge's Order (Dkt. No. 44) is hereby VACATED. Accordingly, the Motions to Compel Arbitration filed by Defendant Schein and the Manufacturer Defendants are

		DENIED, and the stay previously entered in this case is hereby LIFTED.The trial date for this action is hereby set for February 5, 2018, and the pretrial hearing date is set for January 8, 2018. Accordingly, the Parties are ORDERED to meet and confer and thereafter jointly submit a proposed Docket Control Order to the Court within 14 days of this Order based on the above trial and pre-trial dates. Signed by Judge Rodney Gilstrap on December 7, 2016. (jml) (Entered: 12/07/2016)
		* * * * *
12/13/2016	64	NOTICE OF APPEAL as to 63 Memorandum & Opinion,, by Danaher Corporation, Dental Equipment LLC, Dental Imaging Technologies, Corporation, Instrumentarium Dental Inc., KaVo Dental Technologies, LLC. Filing fee $ 505, receipt number 0540-6069680. (Attachments: # 1 Exhibit Memorandum Opinion and Order) (Weingarten, James) (Entered: 12/13/2016)
12/14/2016	65	NOTICE OF APPEAL by Henry Schein, Inc.. Filing fee $ 505, receipt number 0540-6070414.

		(Schuster, Paul) (Entered: 12/14/2016)
12/14/2016	66	Joint MOTION to Stay *Proceedings Pending Appeal* by Danaher Corporation, Dental Equipment LLC, Dental Imaging Technologies, Corporation, Henry Schein, Inc., Instrumentarium Dental Inc., KaVo Dental Technologies, LLC. (Attachments: # 1 Text of Proposed Order Proposed Order) (Weingarten, James) (Entered: 12/14/2016)
		* * * * *
12/21/2016	70	RESPONSE in Opposition re 66 Joint MOTION to Stay *Proceedings Pending Appeal Plaintiff's Response in Opposition to Defendants' Motion to Stay Proceedings Pending Appeal filed by Archer and White Sales, Inc.*. (Attachments: # 1 Text of Proposed Order Proposed Order) (Brumbaugh, Kay Lynn) (Entered: 12/21/2016)
		* * * * *
02/17/2017	88	MEMORANDUM OPINION AND ORDER re 66 Joint MOTION to Stay *Proceedings Pending Appeal* filed by Dental Equipment LLC, Henry Schein, Inc., KaVo Dental Technologies, LLC, Instrumentarium Dental Inc.,

		Dental Imaging Technologies, Corporation, Danaher Corporation. Signed by Judge Rodney Gilstrap on 2/17/2017. (nkl,) (Entered: 02/17/2017)
		* * * * *
10/30/2017	261	Sealed Document. SECOND AMENDED COMPLAINT (Baxter, Samuel) (Entered: 10/30/2017)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Civil Action No. _____

ARCHER AND WHITE SALES, INC.,
Plaintiff,

v.

HENRY SCHEIN, INC., DANAHER CORPORATION, INSTRUMENT ARIUM DENTAL INC., DENTAL EQUIPMENT LLC, KAVO DENTAL TECHNOLOGIES, LLC AND DENTAL IMAGING TECHNOLOGIES, CORPORATION,
Defendants.

COMPLAINT

Plaintiff Archer and White Sales, Inc. ("Archer Dental") files this action against Defendants Henry Schein, Inc. ("Schein"), Danaher Corporation ("Danaher"), Instrumentarium Dental Inc. ("Instrumentarium"), Dental Equipment LLC d/b/a Pelton & Crane ("Pelton & Crane"), Dental Equipment LLC d/b/a Marus ("Marus"), Dental Equipment LLC d/b/a DCI Equipment ("DCIE"), KaVo Dental Technologies, LLC ("KaVo") and Dental Imaging Technologies, Corporation d/b/a Gendex Corp. ("Gendex"), (collectively, "Defendants"). Archer Dental seeks treble damages and injunctive relief for violations by all Defendants of Section 1 of the Sherman Act, 15

U.S.C. § 1, and the Texas Free Enterprise and Antitrust ACT, TEX. BUS. & COMM. CODE, § 15.01.

NATURE OF THE CASE

1. This is an antitrust case arising out of the combination and conspiracy by Schein and Company X (not named as a defendant in this complaint), who are horizontal competitors in the distribution of dental equipment, to fix prices and refuse to compete with each other on the sales of dental equipment to dental professionals and their further agreement with each other to force their common supplier Danaher and its various subsidiaries (collectively, "Danaher") to terminate and/or reduce the distribution territory of their price-cutting competing distributor Archer Dental. This termination was an illegal boycott, the purpose of which was to allow Schein and Company X to maintain and perpetuate their price-fixing agreement and their agreement not to compete on the sales of dental equipment. Danaher, as a common supplier of dental equipment to Schein, Company X and Archer Dental, facilitated the reduction in competition to increase prices by knowingly participating in the illegal boycott. Danaher knowingly participated in the illegal boycott to insure that Schein, a large and dominant distributor of Danaher dental equipment, and Company X, a significant distributor of Danaher dental equipment, would continue to sell and promote Danaher dental equipment. Danaher prohibited Archer Dental from selling dental equipment in areas and to customers which the distribution agreements between Archer Dental and Danaher or its predecessors permitted Archer Dental to sell, and it denied Archer Dental the discount structure to which Archer Dental was entitled based on its sales. Although the full extent of Archer Dental's damages caused by Defendants

are not fully known at this time, they are estimated to be in the tens of millions of dollars.

2. Defendants and Company X have carried out their conspiracy through a series of unlawful activities, including, but not limited to agreements not to compete, agreements to fix prices, and boycotts. Defendants' and Company X's conspiracy is continuing and they have committed acts in furtherance of that conspiracy in the four years preceding the filing of this complaint.

3. Defendants' and Company X's conspiracy enables them to enjoy the economic benefits that flow from conspiring to operate an unlawful cartel that refuses to compete for the sale of dental equipment, forecloses competition by others in the sale of dental equipment and fixes prices for dental equipment purchased by dental professionals throughout the United States.

JURISDICTION, VENUE AND INTERSTATE COMMERCE

4. This action is brought under Section 1 of the Sherman Act, 15 U.S.C. § 1 and the Texas Free Enterprise and Antitrust Act, TEX. BUS. & COMM. CODE, § 15.05.

5. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1337, and 15 U.S.C. §§ 15 and 26.

6. This Court has personal jurisdiction over Defendants because each of them systematically and continuously transacts substantial business in the United States and in Texas and in the Eastern District of Texas.

7. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391 because Defendants inhabit, transact business, reside, are found to have an agent in this District and a substantial part of the events

or omissions giving rise to the claim occurred in this District.

8. Defendants Danaher, KaVo, Instrumentarium, Gendex, Pelton & Crane, Marus and DCIE sell dental equipment across state lines. Defendant Schein markets and sells dental equipment across state lines. All Defendants receive substantial payments across state lines from the sale of dental equipment. Defendants' business activities that are the subject of this Complaint are within the flow of, and substantially have affected, interstate trade and commerce.

PARTIES

Plaintiff

9. Plaintiff Archer Dental is located at 1107 Summit Avenue, Suite 1, in Plano, Collin County, Texas, in the Eastern District of Texas. Archer DePntal is a family-owned business and has been in the business of distribution, sales and service of dental equipment and supplies to dental professionals since 1983.

Defendants

10. Defendant Danaher is a for-profit corporation organized and existing under the laws of the State of Delaware with its principal place of business at 2200 Pennsylvania Avenue, NW, Suite 800W, Washington, DC 20037. Defendant Danaher may be served with process by serving its Registered Agent, Corporation Service Company, 2711 Centerville Rd., Suite 400, Wilmington, DE 19808. On information and belief, Danaher is the largest manufacturer of dental equipment in the United States. Danaher primarily sells and distributes its dental equipment through distributors such as Schein, Company X and Archer Dental.

11. Defendant Instrumentarium is a for-profit corporation organized and existing under the laws of the State of Wisconsin with its principal place of business at 1245 W. Canal St., Milwaukee, Wisconsin 53233. Defendant Instrumentarium may be served with process by serving its Registered Agent, CT Corporation System. 8040 Excelsior Drive, Suite 200, Madison, WI 53717. On information and belief, Instrumentarium is a wholly-owned subsidiary of Danaher. Instrumentarium primarily sells and distributes its dental equipment through distributors such as Schein, Company X and Archer Dental.

12. Defendant Dental Equipment LLC does business under the names Pelton & Crane Marus and DCI Equipment. Dental Equipment LLC is a for-profit corporation organized and existing under the laws of the State of North Carolina with its principal place of business at 11727 Fruehauf Drive, Charlotte, North Carolina 28273. Defendant Dental Equipment LLC may be served with process by serving its Registered Agent, CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, NC 27601. On information and belief, Dental Equipment LLC is a wholly-owned subsidiary of Danaher. Dental Equipment LLC primarily sells and distributes its dental equipment through distributors such as Schein, Company X and Archer Dental.

13. Defendant KaVo is a for-profit corporation organized and existing under the laws of the State of North Carolina with its principal place of business at 1340 East Main Street, Lake Zurich, Illinois 60047. Defendant KaVo may be served with process by serving its Registered Agent, Secretary of State, 2 South Salisbury Street, Raleigh, NC 27601. On information and belief, KaVo is a wholly-owned subsidiary of Danaher. KaVo primarily

sells and distributes its dental equipment through distributors such as Schein, Company X and Archer Dental.

14. Defendant Gendex is a for-profit corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business at 1910 N. Penn Road, Hatfield, Pennsylvania 19440. Defendant Gendex may be served with process by serving its Registered Agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. On information and belief, Gendex is a wholly-owned subsidiary of Danaher. Gendex primarily sells and distributes its dental equipment through distributors such as Schein, Company X and Archer Dental.

15. Defendant Schein is a for-profit corporation organized and existing under the laws of the State of Delaware with its principal place of business at 135 Duryea Road, Melville, New York 11747. Defendant Schein may be served with process by serving its Registered Agent, Department of State, New York City Location, 123 William Street, New York, NY 10038-3804. On information and belief, Schein is the largest distributor of dental equipment in the United States. Schein's overall net sales in 2011 were a record $8.5 billion. Schein's dental sales constitute over one-third of its total net sales.

16. Company X is not sued in the complaint. It is a real company and is a significantparticipant in the business of sales and service of dental equipment and supplies in the United States. Neither its real name nor the real name of its manager is used in this complaint. Defendants are aware of the participants to the communications and conduct described in this complaint.

17. Schein and Company X distribute many of the same lines of dental equipment in the same geographic areas and are therefore horizontal "competitors," but as described below,they have secretly agreed not to compete.

18. The acts charged in this Complaint as having been done by Defendants and Company X were authorized, ordered, and/or done by their officers, agents, employees, and/or representatives, while actively engaged in the management of their business and affairs.

BACKGROUND

19. In 1963, James Archer, Sr. began working in the dental equipment sales and service industry as the college representative at Baylor Dental School in Dallas, Texas. After college, he worked for several companies in the dental business over the years.

20. In 1983, James Archer, Sr. started a dental equipment sales and service business which became Archer and White Sales, Inc. in Plano, Collin County, Texas. Archer Dental's primary customers are dentists. Mr. Archer was a pioneer of the discount full service dental equipment supplier business. Mr. Archer's son, James Jr., started working in the family business when he was only 12 years old by repairing dental hand pieces. James Archer, Jr. took the company into national sales distribution of dental equipment in 1993 through catalog and later internet sales. James Archer, Jr. is now the President of Archer Dental.

21. Prior to 2004, there were a number of dental equipment manufacturers in the U.S., and Archer Dental was an authorized distributor for multiple manufacturers, including Gendex, Kavo, Pelton & Crane, Marus, Kerr, DCI and others. Beginning in or around 2004, Danaher embarked on a plan to consolidate the dental equipment

manufacturing industry. Danaher has become the largest manufacturer of dental equipment, in part, by acquiring multiple smaller manufacturers of dental equipment over the years. For example, in 2004, Danaher acquired the Kavo and Gendex dental equipment businesses. In 2005, Danaher acquired the Pelton & Crane, Marus and DCI dental equipment businesses. In 2009, Danaher acquired PaloDEx Group, the owner of the Instrumentarium line of equipment. On information and belief, Danaher controls and directs the business activities of the dental equipment companies it has acquired and that are identified herein. Given that it owns and now controls a substantial portion of the dental equipment manufacturing industry, doing business with Danaher is essential to the economic success of dental equipment distributors such as Archer Dental. Certain Danaher brands have unique features and capabilities and are accepted by dentists in ways that other brands are not. The ability to distribute Danaher dental equipment brands is necessary for Archer Dental to compete effectively in the industry with Schein and Company X.

22. Archer Dental became known nationally among dental professionals (who purchase and use dental equipment) for its low prices and high-quality service. Archer Dental's sales always grew significantly when it gained distribution rights to an equipment line or a new distribution territory. That growth, however, would eventually draw the attention and later the action of its competitors who disliked Archer Dental's lower prices. As Archer Dental would learn later, it also became nationally known and disliked by competing dealers because of its low prices. What Archer Dental would not know for some time was the illegal lengths to which its competitors would go to shut down Archer Dental so that those competitors could maintainartificially high prices.

The Conspiracy to Thwart Archer Dental's Growth in Oklahoma and Northwest Arkansas

23. Archer Dental's authorized distribution territory in its dealer agreements with Danaher allowed it to sell equipment in Texas and parts of Oklahoma and Northwest Arkansas. In addition to its strong Texas sales, Archer Dental's sales of equipment into Oklahoma and Northwest Arkansas were strong. In 2004, Archer Dental explored the possibility of partnering with a company that already had a physical location in Oklahoma to further expand its sales in Oklahoma and Northwest Arkansas. When Company X's Dental manager in Oklahoma, (identified as XGM for purposes of this complaint), learned of Archer Dental's possible expansion plans, he called James Archer, Sr. and begged him not to enter into Oklahoma in a bigger way. Little did Archer Dental know at the time, but XGM's phone call was far more than just one old friend making a plea to another; XGM's call was part of a broader conspiracy to stifle competition in the dental equipment business.

24. In July 2004, Archer Dental entered into a business arrangement with Oklahomabased dental distributor Dynamic Dental Solutions, Inc. ("Dynamic") whereby Dynamic would act as a sales representative for Archer Dental for various equipment lines which Archer Dental was authorized to sell. Archer Dental was billed by Danaher for the equipment Dynamic sold on Archer Dental's behalf, and Archer Dental paid Danaher for that equipment. Archer Dental had financial responsibility for the equipment that Dynamic sold on Archer Dental's behalf. Dynamic received a percentage of the sales that it made on behalf of Archer Dental. Importantly, Archer Dental it-

self continued to make sales in significant volumes directly into Oklahoma and Northwest Arkansas after Dynamic became its sales representative.

25. At the time Archer Dental entered into its arrangement with Dynamic, Archer was an authorized dealer of several dental equipment manufacturers including Pelton & Crane, Marus, DCI, DentalEZ and others. Marus and others recognized Dynamic as an authorized branch location of Archer Dental.

26. As Archer Dental's sales agent, Dynamic practiced the same high-quality-service, low-price philosophy practiced by Archer Dental. As a result, Dynamic's sales grew significantly in its first few years after its business arrangement with Archer Dental. While Dynamic's sales were growing, Schein and Company X were engaged in a price-fixing conspiracy and an agreement not to competitively bid against each other. Once Dynamic's annual sales of equipment for lines such as Pelton & Crane reached almost a million dollars, Schein and Company X began to take notice and they were not happy as those sales were cutting into their anticompetitive, fixed margins. Initially, Schein and Company X merely complained to the equipment manufacturers, such as Danaher, about Dynamic's competitive pricing. As Dynamic's sales continued to grow, however, Schein and Company X escalated their attack on Archer Dental.

27. In September 2007, Dynamic applied to membership in the American Dental Cooperative, Inc. ("ADC") (now known as "NDC Dental"), a cooperative organization created to assist smaller, independent companies compete against large national companies. ADC membership is vital to the ability of smaller, independent dealers to obtain access to various lines of dental product and

equipment lines that these dealers could not otherwise obtain. Dynamic's membership application to ADC was accepted and the membership acceptance confirmed in December 2007 by a verbal confirmation from ADC to Dynamic and by ADC's providing to Dynamic a complete set of confidential, exclusive ADC price sheet for items that ADC makes available to its members.

28. In early 2008, however, before Dynamic could realize the benefits of its membership, ADC revoked Dynamic's membership on the basis of unspecified "input received." What Archer Dental discovered much later was that Dynamic's membership had been revoked because Company X's manager XGM complained to ADC about Dynamic's low prices and insisted that ADC terminate Dynamic's membership.

29. The secret campaign to oust Dynamic from ADC membership was not the only anticompetitive activity being waged against Archer Dental and its sales agent Dynamic in January 2008. Archer Dental would later learn that in January 2008, Schein's Tulsa Manager Mark Lowery threatened Danaher's Pelton & Crane representative Don Givens. Lowery told Givens that Schein – Pelton & Crane's largest distributor – would stop selling Pelton & Crane equipment if Pelton & Crane did not stop doing business with Dynamic and Archer Dental.

30. Consistent with the coordinated and conspiratorial scheme between Company X and Schein, in January 2008, Company X's manager XGM made the same threat to Don Givens and also to other dental equipment manufacturers such as Belmont Equipment. The threats from Schein and Company X were clear – either stop selling equipment to Archer Dental and Dynamic because they are interfering with Schein's and Company X's ability to continue to ob-

tain anticompetitive, fixed prices from dental professionals to whom they were selling, or Schein and Company X will stop buying equipment from Danaher and Belmont.

31. By the time Schein and Company X began their coordinated boycotting activities against Archer Dental and Dynamic, Danaher had acquired multiple lines of dental equipment that had previously been manufactured by independent companies, including Pelton & Crane, Marus and DCI. Danaher possessed, and continues to possess, a dominant position in the dental equipment market. Danaher obviously took the threats from Schein and Company X seriously. Danaher agreed to join their illegal boycott and deprive Archer Dental of the ability to distribute dental equipment it needed to compete effectively.

32. In response to the threats from Schein and Company X, in January 2008, Danaher Regional Sales Manager, Dan Bump met with Lowery of Schein and XGM of Company X to discuss Archer Dental's and Dynamic's prices and what to do about them. Bump also met with Schein's Little Rock, Arkansas branch as well. At the meetings, Danaher, Schein and Company X collectively agreed that Dynamic and Archer Dental would be cut off from selling Pelton & Crane, Marus and DCI dental equipment in Oklahoma and Northwest Arkansas. Not only was Dynamic cut off from selling the various Danaher equipment lines in Oklahoma and Northwest Arkansas, but Archer Dental, which had separately been selling into those states for years, was completely banned by Danaher from selling into Oklahoma and Northwest Arkansas as well and was restricted to selling in Texas only. With Dynamic and Archer Dental removed as competitors, Schein and C mpany X could continue their agreement to fix margins on dental equipment sold to dental

professionals. As the quid pro quo for terminating Dynamic and cutting back Archer Dental's direct sales to Texas, Schein and Company X promised Danaher to (1) continue to distribute Danaher dental equipment brands, and (2) "make up" the sales volume that Danaher would lose as the result of restricting Archer Dental's and Dynamic's ability to sell Pelton & Crane, Marus and DCI equipment. In fact, in order to sufficiently make up the volume lost by restricting Archer Dental (because, on information and belief, Archer Dental had become the 5th largest Pelton & Crane dealer in the U.S.), Danaher secured promises for additional sales not only from Schein's Oklahoma branch managed by Lowery but also Schein's Little Rock, Arkansas branch, in addition to the promise from XGM on behalf of Company X, because it would take all three of them to make up the significant sales previously made by Archer Dental and Dynamic. Pelton & Crane did not inform Archer Dental or Dynamic of the termination and restriction decisions at the time they were agreed to by Schein, Company X and Danaher.

33. The decision to restrict and terminate Archer Dental and Dynamic was a collective decision between and among horizontal competitors Schein and Company X and their common manufacturer Danaher. The way in which the decision was communicated underscores that the decision was the product of collusion. On February 25, 2008, Schein held a teleconference with its employees and announced to them that Dynamic had been terminated from selling the Pelton & Crane line of equipment and that Archer Dental had been cut back. Over a week later, Dynamic finally received written notification that it would not longer be able to distribute Pelton & Crane, Marus or DCI products, and Danaher Regional Sales Manager Dan Bump told Archer Dental that it could not sell past the Red River and was restricted to selling dental equipment

within the State of Texas. Danaher restricted Archer Dental to Texas as part of the illegal boycott and despite Archer Dental's years of strong sales within the States of Oklahoma and Arkansas.

34. During the Oklahoma Dental Association meeting on May 17, 2008, Skip Pettus of Dynamic was walking down an aisle at the meeting and ran into XGM of Company X and Ron Fernandez of Schein who were involved in a conversation. XGM told Pettus that the three of them should sit down and talk. Then XGM said to Pettus, "You have got to raise your prices!" Then Mark Lowery of Schein walked up and joined the conversation. Lowery and XGM proceeded to explain Schein's and Company X's ongoing price-fixing agreement to Pettus and invited him to join it on behalf of Dynamic and Archer Dental.

35. Disturbed by the content of the May 17, 2008 meeting, Archer Dental set out to determine what had really been happening in the dental equipment industry. What it would learn and be told by participants in the cartel would disturb Archer Dental even more.

36. On May 27, 2008, at the request of Archer Dental, Skip Pettus met with Company X manager XGM to investigate Archer Dental's concerns that anticompetitive conduct – conduct directed at Archer Dental and all purchasers of dental equipment – was occurring and that the ringleaders were Schein and Company X.

37. During the meeting with XGM, he described the "trust" relationship between Schein and Company X – an unusual adjective to describe the relationship between two companies that publicly present themselves to their customers as competitors. XGM explained that Company X will not compete with Schein in situations in which Company X knows that Schein has already begun talking with

a dental professional to sell dental equipment. XGM will simply tell the dental professional that they should buy their equipment from Schein. As XGM described it, his counterpart at Schein "knows that I'm not going to go behind his back and try to get that customer." When a dental professional asks Company X to provide a price on an item that Schein has already offered to sell that customer, Company X simply tells the dental professional, "I want you to buy [the items] from Ron [a Schein salesman]."

38. XGM, like his counterpart at Schein, explained to Pettus that he wanted to be "on the same playing field" with his competitors. In an effort to facilitate bringing Archer Dental into their unlawful agreements, XGM even offered to contact his counterparts at Schein to encourage a meeting with Pettus.

39. On June 2, 2008, Pettus met with Schein manager Mark Lowery. That meeting was even more revealing about the ongoing anticompetitive agreements between Schein and Company X. Echoing almost the identical words of XGM, Lowery remarked to Pettus: "I think when everyone plays on the same playing field, it makes things a whole lot easier." Lowery explained that he "like[s] [XGM]" and considers [XGM] a "good competitor."

40. Lowery explained in great detail how Schein and Company X enforce their unlawful agreements and stay on that same "playing field." Lowery explained that if Schein is talking to a customer and that customer calls Company X to check a price, Company X manager XGM "step[s] out of it . . . [he's] not going to bid it" because Company X "wants to maintain a certain [gross profit]." Similarly, if Schein receives a request for price from a customer, in the interest of "keeping the integrity of margins," (*i.e.*, the conspirators' code phrase for keeping

prices artificially high), Schein is "not going to talk about price" because Schein does not want to be "slugging it out [with competition] and killing each other on margins." Under the Schein-Company X agreement, as Lowery put it, "[T]he doctor gets it for the same price no matter who they buy it from."

41. Schein and Company X enforce their unlawful agreement by staying in close contact. When there are "issues [as in someone charging too low a margin]," Lowery and XGM call each other and ask "what's going on?" Lowery confessed, "I have no problem calling [XGM] up and going what the hell are you doing, [XGM]? Are you trying to screw me over here?" As an example, Lowery admitted that he called XGM about a dentist in Tahlequah, Oklahoma because the dentist had previously bought from Schein, and Company X's sale of an item to this dentist violated the illegal non-competition agreement between the two companies.

42. Lowery also explained to Pettus how Schein and Company X have brought manufacturers, including Danaher, into the fold by utilizing the manufacturer representatives to enforce the margin-fixing agreement in two ways: (1) agreeing with the manufacturers that they give all dealers the same deal so that all the dealers are "on the same playing field" and (2) terminating or restricting competing dealers who refuse to play on the same field and sell at the same high prices at which Schein and Company X agree with each other to sell.

43. In their meeting, Lowery made it clear to Pettus that the only way that Schein would leave Archer Dental's Oklahoma branch alone and cease the boycotting agreement was for Archer Dental's Oklahoma branch to "play on the same field." In other words, so long as Dynamic maintained margins high, Lowery "[doesn't] care." He

just wanted his competitors to "have the same goal in mind." Lowery bragged that he "knows [XGM]. You guys [Dynamic] are the unknown." He expressed concern that Dynamic will "give away margin" whereas Company X will not. He even went so far as to gloat that he thinks it is "terrific" when Company X gets "full boat [*i.e.*, profit margin that is in excess of 32%]" on a sale; he's "happy" with that.

44. Acknowledging the need to keep the price-fixing agreement secret, Lowery instructed Pettus to "make it invisible with the customer because we don't want to compromise that end of it and make it look like we are . . . having a big conspiracy going on . . ." Lowery observed that if Dynamic offered a price based on its usual margin percentage and Schein offered a price based on its usual margin percentage (a percentage significantly higher than Dynamic's), it just made the higher priced company "look like you're really trying to gouge the doctor." That does not happen, however, when competitors are adhering to the unlawful agreement. Because of the anticompetitive agreements with competitors, Lowery boasted that he can give a customer a price "with confidence" and tell them to "go ahead" and do a price check because he secretly knows that the customer will not be offered a lower price by a competitor.

45. Lowery complained to Pettus that had Dynamic not made Schein "look stupid" by offering lower prices and had Dynamic been "upon the level playing field" [charging the same high prices as Schein] then everything would have been "hunky dory." Schein and Company X would not have complained to Pelton & Crane, would not have entered into an agreement to cut off Dynamic, and Dynamic would still have the Pelton & Crane line today.

Schein, Company X, and Danaher Agree to Restrict Archer Dental's Instrumentarium Distribution

46. During the time that the sales of Archer Dental's Oklahoma branch were growing exponentially, it was agreed in September 2007 during the American Dental Association meeting with Instrumentarium management, John Franz and Mike Null, that Archer Dental would be the first hybrid, national dealer of Instrumentarium dental imaging equipment. A hybrid dealer is one that sells nationally from a single location with no geographic restrictions, in contrast to the limited geographic territories that may be placed on other dealers. The announcement of Archer Dental's new status as the first national hybrid dealer was made by Instrumentarium management to all Instrumentarium sales representatives equipment at the Instrumentarium national sales meeting in 2007. The appointment of Archer Dental as Instrumentarium's first national hybrid dealer was a significant achievement for Archer Dental. As an independent, family-owned business in Plano, Texas, it had established the type of reputation that enabled it to be permitted to sell the cutting-edge, high-end dental imaging equipment made by Instrumentarium, throughout the U.S. – a distinction no other small, independent dealer had been given.

47. Archer Dental quickly demonstrated why it had received the national hybrid dealer appointment. Archer Dental experienced significant sales increases of Instrumentarium equipment. In fact, Archer Dental experienced 90% sales growth each year in the two years it was a national Instrumentarium distributor.

48. With the sales growth of Instrumentarium equipment by Archer Dental, it became obvious to Schein and Company X that they were continuing to lose business to

Archer Dental. Due to its competitive pricing of Instrumentarium equipment, Schein's and Company X's pricefixing agreement was threatened. Schein and Company X therefore decided to widen their anticompetitive campaign against Archer Dental to restrict further its distribution territory and decrease competition.

49. They initially began complaining to Instrumentarium about Archer Dental's pricing. But as with their tactics in Oklahoma, Schein and Company X escalated the threats, telling Instrumentarium that they would not sell Instrumentarium products unless Instrumentarium boycotted Archer Dental.

50. Once again, Danaher, through its predecessor Instrumentarium, decided to join the conspiracy rather than exercise independent business judgment. Instrumentarium gave Company X and Schein veto power over Archer Dental's sales. For example, in October 2008, Archer Dental was directed to "back off" by the Director of Sales for Instrumentarium from a sale to a dentist in the State of Washington because Company X had been working with this dentist and Instrumentarium could not allow the dentist to insist on getting a "lower price out of a local dealer." In other words, Instrumentarium prohibited Archer Dental from making a sale of Instrumentarium equipment in order to force the dentist to pay Company X's higher price for dental equipment. In March of 2009, at Schein's behest this time, Archer Dental was again prohibited by Instrumentarium from making a sale to a dentist in California. These were not isolated incidents. As the Director of Sales of Instrumentarium, Mike Null, explained to Archer Dental, "This is Schein's backyard and Schein is raising hell about your current pricing. . . ." The anticompetitive conduct directed at Archer Dental was undertaken with full

awareness and approval at Schein headquarters. Null admitted to Archer Dental, "You can't believe what an issue you've become at Schein corporate."

51. Ultimately, Schein and Company X informed Instrumentarium representatives that they could not even set foot in Schein and Company X showrooms and Schein and Company X threatened that they would not sell Instrumentarium equipment until Instrumentarium terminated Archer Dental's ability to distribute Instrumentarium equipment on a national basis. And that is precisely what Instrumentarium, in consort with Schein and Company X did, by letter dated April 2, 2009. Using language suspiciously similar to Schein manager Lowery's references to "margin integrity," Instrumentarium stated that it was reducing Archer Dental's distribution territory from national distribution to the State of Texas in part because of "the integrity of its end-user pricing." In one fell swoop, Archer Dental went from selling over $1.2 million of Instrumentarium equipment in 2009 to $100,000 in 2011. And dentists outside of Texas lost their competitive alternative and instead have been forced to pay prices fixed by agreement between Schein and Company X, all with the knowledge and complicity of Danaher.

52. On information and belief, Defendants' and Company X's conspiracy is continuing and injury to Archer Dental from that conspiracy is continuing. Indeed, as recently as May 2012, Danaher management has threatened Archer Dental that if it "steals" (*i.e.*, competes with and/or offers a better price to a dentist than Schein or other horizontal competitors), Archer Dental will be terminated from selling Danaher equipment.

CONCEALMENT AND TOLLING

53. Throughout the relevant period, Defendants and Company X have affirmatively concealed from Plaintiff the unlawful combination, conspiracy and agreement among them alleged in this Complaint. Defendants and Company X have conducted their conspiracy in secret. Upon information and belief, Defendants and Company X planned and implemented the conspiracy during non-public meetings, monitored and enforced the conspiracy in non-public meetings, agreed not to discuss or disclose the details of their conspiracy, falsely represented to Plaintiff that the reasons for the actions taken by Danaher with respect to Plaintiff's distribution rights were unilateral and based on legitimate business reasons, and falsely represented to customers that the prices they paid for dental equipment were fair and competitive.

54. As a result of Defendants' and Company X's concealment, any applicable statute of limitations affecting the rights of Plaintiff has been tolled. Plaintiffs exercised due diligence to learn of their legal rights, and, despite the exercise of due diligence, did not discover and could not have discovered the unlawful conduct alleged herein at the time it occurred. Any applicable statute of limitations has also been tolled by agreement.

COUNT ONE
SHERMAN ACT SECTION 1
VIOLATION AGAINST ALL DEFENDANTS

55. Plaintiff incorporates by reference paragraphs 1 through 54 as if fully alleged herein.

56. At all times relevant to the Complaint, Defendants and Company X have combined and conspired to eliminate competition for the sale of dental equipment and to

maintain margins on the sale of such equipment at anti-competitive levels. In furtherance of their conspiracy, Defendants and Company X have agreed not to compete, agreed not to provide price quotes to dentists who request them and agreed to fix margins on equipment prices. In furtherance of their conspiracies and illegal agreements, Schein and Company X agreed with Danaher (and its predecessor companies) to boycott, terminate and/or restrict Archer Dental's distribution territories.

57. These agreements are *per se* violations of Section 1 of the Sherman Act. More specifically, elimination, by joint collaborative action, of discounters from access to the market is a *per se* violation of the Sherman Act. The participation in the agreement by Danaher, the common supplier to Defendants, Company X and Plaintiff, does not change the character of the conspiracy. Indeed, a conspiracy is horizontal in nature when a number of competitor firms agree with each other and at least one of their common suppliers or manufacturers to eliminate their price-cutting competition by cutting his access to supplies.

58. The agreements that Defendants and Company X have entered, maintained, renewed and enforced with one another have had the purpose and effect of eliminating competition for the sale of dental equipment by and among dealers of dental equipment and maintaining prices for such equipment above competitive levels. Furthermore, as the result of Defendants' and Company X's conduct, all dentists have been deprived of the competition offered by Archer Dental and have overpaid for dental equipment.

59. As a direct and proximate result of Defendants' and Company X's past and continuing violations of Section 1 of the Sherman Act, Plaintiff has suffered injury and damages in an amount to be proved at trial.

60. Plaintiff seeks money damages from Defendants jointly and severally for these violations. These actual damages should be trebled under Section 4 of the Clayton Act, 15 U.S.C. § 15.

61. Plaintiff also seeks injunctive relief. The violations set forth above are continuing and will continue unless injunctive relief is granted.

COUNT TWO
VIOLATION OF TFEAA AGAINST ALL DEFENDANTS

62. Plaintiff incorporates by reference paragraphs 1 through 54 as if fully alleged herein.

63. At all times relevant to the Complaint, Defendants and Company X have combined and conspired to eliminate competition for the sale of dental equipment and to maintain margins on the sale of such equipment at anti-competitive levels. In furtherance of their conspiracy, Defendants and Company X have agreed not to compete, agreed not to provide price quotes to dentists who request them and agreed to fix margins on equipment prices. Defendants and Company X have enforced this agreement in part by agreeing with Danaher (and its predecessor companies) to boycott, terminate and/or restrict Archer Dental's distribution territories. The result of that illegal *per se* boycott has been to eliminate or restrict Archer Dental's ability to distribute and sell Danaher lines of dental equipment to dental professionals in Texas. For example, as explained above, Danaher management has prohibited Archer Dental (which Danaher restricted to selling in the State of Texas as the result of the illegal conspiracy and boycott described above) from competing with Schein or other horizontal competitors in the State of Texas on threat of termination. As a result, Archer Dental is

harmed and Texas dental professionals are denied the benefit of competition.

64. These agreements are *per se* violations of Texas Free Enterprise and Antitrust Act ("TFEAA"). More specifically, elimination, by joint collaborative action, of discounters from access to the market is a *per se* violation of the TFEAA. The participation in the agreement by Danaher, the common supplier to both Defendants and Plaintiff, does not change the character of the conspiracy. Indeed, a conspiracy is horizontal in nature when a number of competitor firms agree with each other and at least one of their common suppliers or manufacturers to eliminate their price-cutting competition by cutting his access to supplies.

65. The agreements that Defendants and Company X have entered, maintained, renewed and enforced with one another have had the purpose and effect of eliminating competition for the sale of dental equipment by and among dealers of dental equipment and maintaining prices for such equipment above competitive levels. Furthermore, as the result of Defendants' and Company X's conduct, dentists in Texas have been deprived of the competition offered by Archer Dental and have overpaid for dental equipment.

66. As a direct and proximate result of Defendants' and Company X's past and continuing violations of the TFEAA, Plaintiff has suffered injury and damages in an amount to be proved at trial.

67. Plaintiff seeks money damages from Defendants jointly and severally for these violations. Defendants' and Company X's violations were willful and flagrant. Plaintiff's actual damages should therefore be trebled under Section 15.21 of the TFEAA.

68. Plaintiff also seeks injunctive relief. The violations set forth above are continuing and will continue unless injunctive relief is granted.

69. As required by Section 15.21(c) of the TFEAA, a copy of this Complaint, shall be mailed to the Attorney General of Texas.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury pursuant to FED. R. CIV. P. 38(b) of all issues triable of right by jury.

PRAYER FOR RELIEF

Therefore, plaintiff demands judgment as follows:

a. Adjudge and declare that Defendants have engaged in unlawful conduct in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. Adjudge and declare that Defendants have engaged in unlawful conduct in violation of Section 15.05(a) of the TFEAA, TEX. BUS & COMM. CODE, §15.05(a);

c. Preliminarily and permanently enjoin Defendants from violating Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 15.05(a) of the TFEAA, TEX. BUS & COMM. CODE, § 15.05(a);

d. Against all Defendants, jointly and severally, award Plaintiff damages in an amount to be proved at trial, to be trebled with interest and the costs of this suit, including attorney's fees; and

e. Award such other further relief as the Court deems just and proper.

Dated: August 31, 2012

Respectfully submitted

/s/ Jerry L. Beane
Jerry L. Beane
State Bar No. 01966000
jerrybeane@andrewskurth.com
Kay Lynn Brumbaugh
State Bar No. 00785152
kaylynnbrumbaugh@andrewskurth.com
ANDREWS KURTH LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201
214.659.4400 Telephone
214.659.4401 Facsimile

ATTORNEYS FOR PLAINTIFF
ARCHER AND WHITE SALES, INC.

DEALER AGREEMENT

This Dealer Agreement (this "Agreement") dated as of October 4, 2007, is made by and between Pelton & Crane ("Pelton & Crane") and Archer and White Sales ("Dealer").

RECITALS

A. Pelton & Crane manufactures and sells Pelton & Crane brand dental equipment and products (the "Products").

B. Pelton & Crane wishes to sell the Products to dealers who demonstrate their ability to sell the Products in a professional manner that will preserve and enhance the valuable reputationand goodwill associated with the Products.

C. Dealer wishes to serve as a Pelton & Crane dealer authorized to sell the Products.

AGREEMENT

The parties agree as follows:

1. DEALER APPOINTMENT

Pelton & Crane appoints Dealer as a nonexclusive authorized dealer for sale of the Products in the previously agreed-upon geographic sales territory subject to the terms and conditions set forth herein. Dealer accepts such appointment.

2. DEALER OBLIGATIONS

2.1 Dealer shall use its best efforts to sell the Products and to encourage the purchase of the Products by Dealer's customers.

2.2 Deaer shall sell the Products only to: (a) licensed doctors of dental medicine; (b) accredited and/or licensed dental or medical clinics and hospitals; (c) accredited dental and medical schools; and (d) appropriate agencies of the federal, state provincial, or local governments (collectively referred to herein as "Qualified Customers").

2.3 Dealer shall sell the Products only to Qualified Customers having their principal place of business: (a) within the previously agreed-upon geographic sales territory; (b) within the geographic area where Dealer's sales force makes regular face-to-face visits and Dealer's sercice staff performs service; and (c) within a reasonable distance of an authorized outlet showroom that displays the Products.

2.4 Dealer shall not, directly or indirectly, sell the Products by mail order.

2.5 Dealer shall not sell the products to any customer for resale. If Dealer learns of a resale by any of its customers, Dealer shall immediately notify Pelton & Crane.

2.6 Dealer shall employ and maintainits own full-time, experienced and knowledgeable sales staff that regularly makes face-to-face sales visits and presentations to customers and potential customers within Dealer's geographic area. Dealer shall train its sales personnel concerning the products and their speciications. Features, and benefits. Dealer shall perform such obligations only through Dealer's own employees, and not through independent contractors.

2.7 Dealer shall make time available during Dealer's sales meetings for Pelton & Crane representatives to present information regarding the Products.

Dealer agrees to conduct such sales meetings at least once every six months.

2.8 Dealer shall maintain at each authorized outlet a showroom for which it shall purchase and in which it shall display the Products according to Pelton & Crane's flooring and display programs. Pelton & Crane may change its flooring and display programs from time to time.

2.9 Dealer shall maintain records of each sale of the Products including the name and address of the purchaser, date of purchase, date of installation, and the model and serial numbers of the Products. Dealer shall deliver a copy of all such information to Pelton & Crane at no charge. Dealer shall not remove any serial numbers.

2.10 Dealer shall provide customer service including installation, instruction of Dealer's customers in the use of Products, warranty service, Product repairs, and other post-sale service. Dealer shall document all Product repairs, Product service, and customer complaints and forward all customer complaint information to Pelton & Crane.

2.11 Dealer shall employ and maintain its own full-time, experienced and knowledgeable service staff sufficiently trained to properly install and service the Products. Dealer shall adequately train their service personnel for service and installation as well as insure the individual(s) providing the training are adequately trained themselves prior to providing any such training. Upon Pelton & Crane's request, provide installation and service training records of service staff. Dealear shall nt install, service, or maintain any of the Products by any person who is unqualified to perform such work.

2.12 Dealer shall purchase and maintain an inventory of spare parts sufficient to enable Dealer to promptly service the Products.

2.13 Dealer shall comply with all laws and regulations pertaining to the sale, assembly, installation and service of the Products by Dealer.

2.14 Dealer shall maintainsufficient product liability and other all risk liability insurance adequate to protect all risks associated with the sale, installation and service of the Products and, upon Pelton & Crane's request, provide Pelton & Crane with an insurance certificate or other evidence of insurance in form and in amounts satisfactory to Pelton & Crane.

2.15 Dealer shall take no action which wil cause Pelton & Crane to be in violation of any law of any jurisdiction in the Territory or the United States, such laws including but not limited to the U.S. Foreign Corrupt Practices Act, the U.S. export control laws and the U.S. antiboycott laws. In this conjunction, Distributor agrees:

1.) To inform all customers that all Products are subject to the Unied States Export Administration Regulations. The following statement shown on invoices, packing lists, and bills of lading may be used for this purpose.

> "These commodities, technology or software were exported from the United States in accourdance with the Export Administration Regulations. Diversion contrary to the Unite States law prohibited."

2.) To provide, upon request by Pelton & Crane, information by Pelton & Crane to obtain U.S. export licenses, including but not limited to formal end-use statements (Statemens by Ultimate Consignee and Purchaser).

3.) To maintain all records relating to sale of the Porducts for not less than five (5) years;

4.) To comply with applicable laws of the Territory relating to the conduct of Distributor's business, including any requirements for registration or recording of this Agreement with governmental entities;

5.) Not to sell Products to customers listed on the current United States Department of Commerce Denied Persons List which shall be provided to Distributorperiodically; and

6.) Not to supply any boycott related information concerning Pelton & Crane.

2.16 Dealer distributing product within the European Union (EU) has the responsibility of registering the product with a "Prodcuer Compliance Scheme" in each country within the EU that product is shipped to in accordance with Directive 2002/96/EC of the European Parliament and the Council of 27 January 2003 on Waste Electrical and Electronic Equipment (WEEE) and liable for all costs associated with WEEE compliance.

3. MULTIPLE LOCATION DEALERS

If Dealer sells Products through more than one outlet, the obligations of Dealer set forth in this Agreement shall apply to each such outlet. Current authorized Dealer outlets are listed on exhibit A attached hereto. Additional outlets may be authorized only by the prior written agreement of Pelton & crane.

4. PELTON & CRANE OBLIGATIONS

4.1 Pelton & Crane shall offer to sell Products to Dealer in accordance with the terms of this Agreement and Pelton & Crane's Terms and Conditions of Sale.

4.2 Pelton & Crane shall furnish to Dealer reasonable quantities of price lists, sales catalogs, installation instructions and service manuals to support Dealer's efforts to sell and service the Products.

5. TERMS AND CONDITIONS OF SALE

All sales of Products by Pelton & Crane shall be subject to Pelton & Crane's Terms and Conditions of Sale, incorporated herein by this reference. Pelton & Crane may change its Terms and Conditions of Sale from time to time by giving notice to Dealer. Dealer shall pay for Products pursuant to the Pelton & Crane Terms and Conditions of Sale.

6. MINIMUM SALES GOALS

[Minimum sales goals for Dealer for the initial twelve (12)-month term of this Agreement are set forth in Exibit B, attached hereto and incorporated herein by this reference.] [Pelton & Crane may establish minimum annual sales goals for Dealer.] Pelton & Crane may adjust the minimum sales goal for Dealer from time to time.

7. NONEXCLUSIVE APPOINTMENT; PELTON & CRANE SALES

7.1 Dealer's appointment is nonexclusive. Pelton & Crane reserves the right to increase or decrease thenumber of authorized dealers for the Products in the vicinity of Dealer's outlet or outlets without prior notice to Dealer.

7.2 Pelton & Crane reserves the right to sell the Products directly to government agencies, dental schools, clinics, hospitals, original equipment manufacturers ("OEMs"), value-added resellers ("VARs"), ditributors and other "house accounts" of Pelton & Crane.

8. TRADEMARKS

Dealer acknowledges that Pelton &Crane owns all rights to the trademarks "Pelton & Crane™", and other logos, trademarks, service marks, trade names and design marks used by Pelton & Crane. Dealer shall not use any Pelton & Crane mark except in advertising or selling the Products and in a manner approved by Pelton & Crane. Upon terminaton of this Agreement, Dealer shall cease all use of Pelton & Crane's marks.

9. LIMITED WARRANTY AND DISCLAIMER

9.1 Each of the Products is warranted by Pelton & Crane in accordance with Pelton & Crane's warranty applicable to such Product set forth in the Pelton & Crane Terms and Conditions of Sale, product warranty registration card, or other Pelton & Crane literature pertaining to such Product.

9.2 EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED IN SECTIONI 9.1 OF THIS AGREEMENT, Pelton & Crane MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR MECHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR SUITABILITY WITH RESPECT TO THE PRODUCTS OR ANY OTHER GOODS, SERVICES OR OTHER MATERIALS PROVEDED BY Pelton & Crane.

10. LIMITATION OF REMEDIES AND LIABILITY

10.1 Pelton & Crane SHALL NOT BE LIABLE TO DEALER OR ANY PERSON FOR Pelton & Crane's FAILURE TO ACCEPT OR FILL ANY ORDER, FOR ERRORS IN FILLIN ANY ORDER, OR FOR ANY DELAY IN DELIVERY.

10.2 Pelton & Crane SHALL NOT BE LIABLE FOR THE COST FO SUBSTITUTE GOODS, LOSS OF PROFITS, OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, EVEN IF Pelton & Crane WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.3 The liability of Pelton & Crane for any and all claims related to or arising out of this Agreement or any Products provided by Pelton & Crane shall be limited to the amount paid by Dealer to Pelton & Crane (for the purchase of Products) during the period of twelve (12) months immediately preceding the date on which any such claim is asserted against Pelton & Crane.

11. TERM AND TERMINATION

11.1 The term of this Agreement shall be effective as of the date set forth in the introductory paragraph and shall continue until terminated as described below unless termeinated earlier pursuant to the provisions in this Agreement.

11.2 Either party may terminate this Agreement immediately: (a) upon breach of this Agreement by the other party if the breach is not cured within ten (10) days after written notice of such breach is given or, (b) upon either party's insolvency, bankruptcy or suspension of business.

11.3 Either party may terminate this Agreement for any reason or no reason by giving 60 days' prior written notice to the other party.

11.4 Sections 8, 9, 10, 12.6, 12.7, and 12.8, and all other provisions of this Agreement which may reasonably

be interpreted or construed as surviving the expiration, termination or cencellation of this Agreement, shall survive the expiration, termination or cancellation of this Agreement.

12. GENERAL PROVISIONS

12.1 Financial Statement. Dealer wil from time to time, upon request by Pelton & Crane, furnish financial statements and information relating to its financial condition, including its current net worth.

12.2 Nonassignment. Dealer will not, directly or indirectly (throught a transfer of ownership of Dealer or otherwise) assign, transfer, or sell its rights under this Agreement, or delegate its duties hereunder, without prior written consent of Pelton & Crane.

12.3 Independent Dealer. Dealer is an independent business and has no authority (nor will Dealer represent that Dealer has any authority) to bind Pelton& Crane or to assume or to create any obligation, express or implied, on behalf of Pelton & Crane. Nothing in this Agreement shall be construed as constituting Dealer and Pelton & Crane as partners, or as creating relationships of employer and employee or principal and agent between the parties.

12.4 Modification. This Agreement (together with the Pelton & Crane Terms and Conditions of Sale) contains the entire agreement between the parties. Unless otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the parties unless made in writing and signed by both parties.

12.5 Waiver. Pelton & Crane may waive any obligation Dealer has under this Agreement, but such a waiver shall not be effective unless made in writing.

12.6 Indemnification. Dealer will indemnify and hold Pelton & Crane, its officers, directors, agents, emplyoees, and affiliates harmless from any claims, demands, loss, damage, liability, or expense, including attorneys' fees and expenses, arising out of the acts or omissions of Dealer, its agents or employees.

12.7 Attorneys'Fees. In the event any suit or action is brought to enforce or interpret any terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses incurred by it in connection therewith.

12.8 Disputes. This Agreement shall be governed by the laws of the state of North Carolina. Any dispute arising under or related to this Agreement (except for actions seeking injunctive relief and disputes related to trademarks, trade secrets or other intellectual property of Pelton & Crane) shall be resolved by binding arbitraton in accordance with the arbitration rules of the American Arbitration Association. The Place of arbitration shall be in Charlotte, North Carolina.

12.9 Notices. Notices shall be deemed given if delivered personally or sent by first class mail, postage prepaid, addressed to the other party at the address set forth in this Agreement or at such other address as designated by the party by written notice.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Pelton & Crane	Dealer:
By: _____	By: Jim Archer
Title: VP Sales	Title: President
Address: 11727 Fruehauf Drive Charlotte, NC 28273	Address: 1107 Summit Plano TX 75074

EXHIBIT A
TO
DEALER AGREEMENT
FOR

Archer and White Sales

Addresses of Authorized dealer outlets

Archer & White Sales
1107 Summit Ave
Plano, TX 75074

Dynamic Dental Solutions
89 E. 530 Road
Pryor, OK 74361

EXHIBIT B
TO
DEALER AGREEMENT
FOR

Archer and White Sales

Minimum Annual Sales Goal
N/A

Commercial Arbitration Rules and Mediation Procedures

Including Procedures for Large, Complex Commercial Disputes

Rules Amended and Effective June 1, 2009
Fee Schedule Amended and Effective June 1, 2010

American Arbitration Association
Dispute Resolution Service Worldwide

www.adr.org

Commercial Arbitration Rules and Mediation Procedures

Important Notice

These rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the AAA. To ensure that you have the most current information, see our websiteat www.adr.org.

Introduction

Each year, many millions of business transactions take place. Occasionally, disagreements develop over these business transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to an impartial person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association (AAA), a not-for-profit, public service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-ofcourt dispute settlement.

Standard Arbitration Clause

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be accomplished by use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules the following controversy: (describe briefly) We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.

In transactions likely to require emergency interim relief, the parties may wish to add to their clause the following language:

The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings.

These Optional Rules may be found on page 49.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the marjority of awards, judgment on the

award can be entered in a court having appropriate jurisdiction if necessary.

Administrative Fees

The AAA charges a filing fee based on the amount of the claim or counterclaim. This fee information, which is included with these rules, allows the parties to exercise control over their administrative fees. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

Mediation

The parties might wish to submit their dispute to mediation prior to arbitration. In mediation, the neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Procedures. There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

If the parties want to adopt mediation as a part of their contractual dispute settlement procedure, they can insert the following mediation clause into their contract in conjunction with a standard arbitration provision:

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute *by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.*

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission:existing dispute, they can enter into the following submission:

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)

Large, Complex Cases

Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes, which appear in this pamphlet, will be applied to all cases administered by the AAA under the Commercial Arbitration Rules in which the disclosed claim or counterclaim of any party is at least $500,000 exclusive of claimed interest, arbitration fees and costs.

The key features of these procedures include:

> a highly qualified, trained Roster of Neutrals;

> a mandatory preliminary hearing with the arbitrators, which may be conducted by teleconference;

> broad arbitrator authority to order and control discovery, including depositions;

> presumption that hearings will proceed on a consecutive or block basis.

Commercial Mediation Procedures

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing

or future disputes under the auspices of the American Arbitration Association (AAA) or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a request for mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail or fax. Requests for mediation may also be filed online via AAA WebFile at **www.adr.org**.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

(i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.

(ii) The names, regular mail addresses, email addresses and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.

(iii) A brief statement of the nature of the dispute and the relief requested.

(iv) Any specific qualifications the mediator should possess.

Where there is no pre-existing stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the AAA, a party may request the AAA to invite another party to participate in "mediation by voluntary submission." Upon receipt of such a request, the AAA will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the Mediator

Parties may search the online profiles of the AAA's Panel of Mediators at **www.aaamediation.com** in an effort to agree on a mediator. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

(i) Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.

(ii) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference and return the list to the AAA. If a

party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.

(iii) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-5. Mediator's Impartiality and Duty to Disclose

AAA mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the Model Standards and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon

receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-4.

M-7. Duties and Responsibilities of the Mediator

(i) The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.

(ii) The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.

(iii) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information

that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.

(iv) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.

(v) In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.

(vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

M-8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-9. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their rep-

resentatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding the following, unless agreed to by the parties or required by applicable law:

(i) Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute,

(ii) Admissions made by a party or other participant in the course of the mediation proceedings,

(iii) Proposals made or views expressed by the mediator or

(iv) The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. Termination of Mediation

The mediation shall be terminated:

(i) By the execution of a settlement agreement by the parties; or

(ii) By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or

(iii) By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or

(iv) When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-13. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.

M-14. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-15. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

There is no filing fee to initiate a mediation or a fee to request the AAA to invite parties to mediate.

The cost of mediation is based on the hourly mediation rate published on the mediator's AAA profile. This rate covers both mediator compensation and an allocated portion for the AAA's services. There is a four-hour minimum charge for a mediation conference. Expenses referenced in section M-16 may also apply.

If a matter submitted for mediation is withdrawn or cancelled or results in a settlement after the agreement to mediate is filed but prior to the mediation conference, the cost is $250 plus any mediator time and charges incurred.

The parties will be billed equally for all costs unless they agree otherwise.

If you have questions about mediation costs or services visit our website at **www.adr.org** or contact your local AAA office.

Conference Room Rental

The costs described do not include the use of AAA conference rooms. Conference rooms are available on a rental basis. Please contact your local AAA office for availability and rates.

Commercial Arbitration Rules

R-1. Agreement of Parties*+

(a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a demand for arbitration or submission agreement received by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

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* The AAA applies the Supplementary Procedures for Consumer-Related Disputes to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are nonnegotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the supplementary procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

+ A dispute arising out of an employer promulgated plan will be administered under the AAA's Employment Arbitration Rules and Mediation Procedures.

(b) Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds $75,000, exclusive of interest and arbitration fees and costs.

Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties. The Expedited Procedures shall be applied as described in Sections E-1 through E-10 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(c) Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least $500,000, exclusive of claimed interest, arbitration fees and costs. Parties may also agree to use the procedures in cases involving claims or counterclaims under $500,000, or in nonmonetary cases. The Procedures for Large, Complex Commercial Disputes.

(d) All other cases shall be administered in accordance with Sections R-1 through R-54 of these rules.

R-2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may

direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices.

R-3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Commercial Arbitrators ("National Roster") and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

R-4. Initiation under an Arbitration Provision in a Contract

(a) Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

(i) The initiating party (the "claimant") shall, within the time period, if any, specified in the contract(s), give to the other party (the "respondent") written notice of its intention to arbitrate (the "demand"), which demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the remedy sought, and the hearing locale requested.

(ii) The claimant shall file at any office of the AAA two copies of the demand and two copies of the arbitration provisions of the contract, together with the appropriate filing fee as provided in the schedule included with these rules.

(iii) The AAA shall confirm notice of such filing to the parties.

(b) A respondent may file an answering statement in duplicate with the AAA within 15 days after confirmation of notice of filing of the demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the party making the counterclaim shall forward to the AAA with the answering statement the appropriate fee provided in the schedule included with these rules.

(c) If no answering statement is filed within the stated time, respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

(d) When filing any statement pursuant to this section, the parties are encouraged to provide descriptions of their claims in sufficient detail to make the circumstances of the dispute clear to the arbitrator.

R-5. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any office of the AAA two copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the nature of the dispute, the names and addresses of all parties, any claims and counterclaims, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule included with these rules. Unless the parties state otherwise in the submission, all

claims and counterclaims will be deemed to be denied by the other party.

R-6. Changes of Claim

After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA. The party asserting such a claim or counterclaim shall provide a copy to the other party, who shall have 15 days from the date of such transmission within which to file an answering statement with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. Jurisdiction

(a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

(b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

(c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-8. Mediation

At any stage of the proceedings, the parties may agree to conduct a mediation conference under the Commercial Mediation Procedures in order to facilitate settlement. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA's rules, no additional administrative fee is required to initiate the mediation.

R-9. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, potential mediation of the dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-10. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within 15 days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale, and its decision shall be final and binding.

R-11. Appointment from National Roster

(a) If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: The AAA shall send simultaneously to each party to the dispute an identical list

of 10 (unless the AAA decides that a different number is appropriate) names of persons chosen from the National Roster. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.

(b) If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the National Roster without the submission of additional lists.

(c) Unless the parties agree otherwise when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators.

R-12. Direct Appointment by a Party

(a) If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the

appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.

(b) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-17 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-17(a) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.

(c) If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.

(d) If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 15 days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

R-13. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

(a) If, pursuant to Section R-12, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.

(b) If no period of time is specified for appointment of the chairperson and the party-appointed arbitrators or the parties do not make the appointment within 15 days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.

(c) If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-11, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that section.

R-14. Nationality of Arbitrator

Where the parties are nationals of different countries, the AAA, at the request of any party or on its own initiative, may appoint as arbitrator a national of a country other than that of any of the parties. The request must be made before the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

R-15. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the demand or answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.

R-16. Disclosure

(a) Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.

(b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(c) In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section R-16 is not to be construed as an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-17. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(i) partiality or lack of independence,

(ii) inability or refusal to perform his or her duties with diligence and in good faith, and

(iii) any grounds for disqualification provided by applicable law. The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-12 shall be

nonneutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.

(b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-18. Communication with Arbitrator

(a) No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate ex parte with a candidate for direct appointment pursuant to Section R-12 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or partydesignated arbitrators are to participate in that selection.

(b) Section R-18(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-17(a), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-17(a), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-18(a) should nonetheless apply prospectively.

R-19. Vacancies

(a) If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

(b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

(c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-20. Preliminary Hearing

(a) At the request of any party or at the discretion of the arbitrator or the AAA, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties and/or their representatives. The preliminary hearing may be conducted by telephone at the arbitrator's discretion.

(b) During the preliminary hearing, the parties and the arbitrator should discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters.

R-21. Exchange of Information

(a) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct

(i) the production of documents and other information, and

(ii) the identification of any witnesses to be called.

(b) At least five business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.

(c) The arbitrator is authorized to resolve any disputes concerning the exchange of information.

R-22. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 days in advance of the hearing date, unless otherwise agreed by the parties.

R-23. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person other than a party and its representatives.

R-24. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the

name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

R-25. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-26. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing.

The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

R-27. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-28. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

R-29. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-30. Conduct of Proceedings

(a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The parties may agree to waive oral hearings in any case.

R-31. Evidence

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to

an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

(b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

R-32. Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

(a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

(b) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-33. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-34. Interim Measures **

(a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.

(c) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-35. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed. If briefs are to be filed, the hearing

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** The Optional Rules may be found on page 49.

shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section R-32 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing.

R-36. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

R-37. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

R-38. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

R-39. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party, or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.

(b) The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission (fax), to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail (e-mail), or other methods of communication.

(c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-40. Majority Decision

When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement, a majority of the arbitrators must make all decisions.

R-41. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the

date of the AAA's transmittal of the final statements and proofs to the arbitrator.

R-42. Form of Award

(a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the manner required by law.

(b) The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

R-43. Scope of Award

(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

(b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.

(c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-49, R-50, and R-51. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.

(d) The award of the arbitrator(s) may include:

(i) interest at such rate and from such date as the arbitrator(s) may deem appropriate; and

(ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-44. Award upon Settlement

If the parties settle their dispute during the course of the arbitrationand if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award." A consent award must include an allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.

R-45. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-46. Modification of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto.

R-47. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

R-48. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

R-49. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an initial filing fee and a case service fee to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final

apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-50. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

R-51. Neutral Arbitrator's Compensation

(a) Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation.

(b) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.

(c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

R-52. Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

R-53. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

R-54. Suspension for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

Expedited Procedures

E-1. Limitation on Extensions

Except in extraordinary circumstances, the AAA or the arbitrator may grant a party no more than one seven-day extension of time to respond to the demand for arbitration or counterclaim as provided in Section R-4.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds $75,000, the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by Section R-39(b), the parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

(a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed.

(b) The parties are encouraged to agree to an arbitrator from this list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the panel without the submission of additional lists.

(c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section R-17. The parties shall notify the AAA within seven days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

E-6. Proceedings on Documents

Where no party's claim exceeds $10,000, exclusive of interest and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. The arbitrator shall establish a fair and equitable procedure for the submission of documents.

E-7. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the hearing, to be scheduled to take place within 30 days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

E-8. The Hearing

(a) Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two days after the hearing. For good cause shown, the arbitrator may schedule additional hearings within seven business days after the initial day of hearings.

(b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section R-26.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

E-10. Arbitrator's Compensation

Arbitrators will receive compensation at a rate to be suggested by the AAA regional office.

Procedures for Large, Complex Commercial Disputes

L-1. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference will take place within 14 days after the commencement of the arbitration. In the event the parties are unable to agree on a mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

(a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;

(b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;

(c) to obtain conflicts statements from the parties; and

(d) to consider, with the parties, whether mediation or other nonadjudicative methods of dispute resolution might be appropriate.

L-2. Arbitrators

(a) Large, complex commercial cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. If the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least $1,000,000, then three arbitrator(s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each

claim and counterclaim is less than $1,000,000, then one arbitrator shall hear and determine the case.

(b) The AAA shall appoint arbitrator(s) as agreed by the parties. If they are unable to agree on a method of appointment, the AAA shall appoint arbitrators from the Large, Complex Commercial Case Panel, in the manner provided in the regular Commercial Arbitration Rules. Absent agreement of the parties, the arbitrator(s) shall not have served as the mediator in the mediation phase of the instant proceeding.

L-3. Preliminary Hearing

As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be held among the parties and/or their attorneys or other representatives and the arbitrator(s). Unless the parties agree otherwise, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) service of a detailed statement of claims, damages and defenses, a statement of the issues asserted by each party and positions with respect thereto, and any legal authorities the parties may wish to bring to the attention of the arbitrator(s);

(b) stipulations to uncontested facts;

(c) the extent to which discovery shall be conducted;

(d) exchange and premarking of those documents which each party believes may be offered at the hearing;

(e) the identification and availability of witnesses, including experts, and such matters with respect to

witnesses including their biographies and expected testimony as may be appropriate;

(f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) the extent to which hearings will proceed on consecutive days;

(h) whether a stenographic or other official record of the proceedings shall be maintained;

(i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) the procedure for the issuance of subpoenas.

By agreement of the parties and/or order of the arbitrator(s), the pre-hearing activities and the hearing procedures that will govern the arbitration will be memorialized in a Scheduling and Procedure Order.

L-4. Management of Proceedings

(a) Arbitrator(s) shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of large, complex commercial cases.

(b) Parties shall cooperate in the exchange of documents, exhibits and information within such party's control if the arbitrator(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a large, complex commercial case.

(c) The parties may conduct such discovery as may be agreed to by all the parties provided, however, that the arbitrator(s) may place such limitations on the conduct of such discovery as the arbitrator(s) shall deem appropriate. If the parties cannot agree on

production of documents and other information, the arbitrator(s), consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) At the discretion of the arbitrator(s), upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator(s) may order depositions of, or the propounding of interrogatories to, such persons who may possess information determined by the arbitrator(s) to be necessary to determination of the matter.

(e) The parties shall exchange copies of all exhibits they intend to submit at the hearing 10 business days prior to the hearing unless the arbitrator(s) determine otherwise.

(f) The exchange of information pursuant to this rule, as agreed by the parties and/or directed by the arbitrator(s), shall be included within the Scheduling and Procedure Order.

(g) The arbitrator is authorized to resolve any disputes concerning the exchange of information.

(h) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Optional Rules for Emergency Measures of Protection

O-1. Applicability

Where parties by special agreement or in their arbitration clause have adopted these rules for emergency measures of protection, a party in need of emergency relief prior to the constitution of the panel shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by facsimile transmission, or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.

O-2. Appointment of Emergency Arbitrator

Within one business day of receipt of notice as provided in Section O-1, the AAA shall appoint a single emergency arbitrator from a special AAA panel of emergency arbitrators designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed in the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

O-3. Schedule

The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application

for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone conference or on written submissions as alternatives to a formal hearing.

O-4. Interim Award

If after consideration, the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage will result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim award granting the relief and stating the reasons therefore.

O-5. Constitution of the Panel

Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the panel is constituted; thereafter such a request shall be addressed to the panel. The emergency arbitrator shall have no further power to act after the panel is constituted unless the parties agree that the emergency arbitrator is named as a member of the panel.

O-6. Security

Any interim award of emergency relief may be conditioned on provision by the party seeking such relief of appropriate security.

O-7. Special Master

A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. If the AAA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the AAA shall proceed

as provided in Section O-1 of this article and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.

O-8. Costs

The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the panel to determine finally the apportionment of such costs.

Administrative Fee Schedules
(Standard and Flexible Fee)

The AAA has two administrative fee options for parties filing claims or counterclaims, the Standard Fee Schedule and Flexible Fee Schedule. The Standard Fee Schedule has a two payment schedule, and the Flexible Fee Schedule has a three payment schedule which offers lower initial filing fees, but potentially higher total administrative fees of approximately 12% to 19% for cases that proceed to a hearing. The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

In an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes. Please refer to Section C-8 of the Supplementary Procedures for Consumer-Related Disputes when filing a consumer-related claim. Note that the Flexible Fee Schedule is not available on cases administered under these supplementary procedures.

The AAA applies the Supplementary Procedures for Consumer-Related Disputes to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiableor primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary

Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

Fees for incomplete or deficient filings: Where the applicable arbitration agreement does not reference the AAA, the AAA will attempt to obtain the agreement of the other parties to the dispute to have the arbitration administered by the AAA. However, where the AAA is unable to obtain the agreement of the parties to have the AAA administer the arbitration, the AAA will administratively close the case and will not proceed with the administration of the arbitration. In these cases, the AAA will return the filing fees to the filing party, less the amount specified in the fee schedule below for deficient filings.

Parties that file demands for arbitration that are incomplete or otherwise do not meet the filing requirements contained in these Rules shall also be charged the amount specified below for deficient filings if they fail or are unable to respond to the AAA's request to correct the deficiency.

Fees for additional services: The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules which may be required by the parties' agreement or stipulation.

Standard Fee Schedule

An Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. A Final Fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at

the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Final Fee
Above $0 to $10,000	$775	$200
Above $10,000 to $75,000	$975	$300
Above $75,000 to $150,000	$1,850	$750
Above $150,000 to $300,000	$2,800	$1,250
Above $300,000 to 500,000	$4,350	$1,750
Above $500,000 to $1,000,000	$6,200	$2,500
Above $1,000,000 to $5,000,000	$8,200	$3,250
Above $5,000,000 to $10,000,000	$10,200	$4,000
Above $10,000,000	Base fee of $12,800 plus .01% of the amount above $10,000,000 Fee Capped at $65,000	$6,000
Nonmonetary Claims[1]	$3,350	$1,250
Deficient Claim Filing Fee[2]	$350	
Additional Services[3]		

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[1] *This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of $10,200.*

[2] *The Deficient Claim Filing Fee shall not be charged in cases filed by a consumer in an arbitration governed by the Supplementary Procedures for the Resolution of Consumer-Related Disputes, or in cases filed by an Employee who is submitting their dispute to arbitration pursuant to an employer promulgated plan.*

[3] *The AAA may assess additional fees where procedures or services outside the Rules sections are required under the parties' agreement or by stipulation.*

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are $2,800 for the Initial Filing Fee, plus a $1,250 Final Fee. Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds $75,000, exclusive of interest and arbitration costs.

Parties on cases filed under either the Flexible Fee Schedule or the Standard Fee Schedule that are held in abeyance for one year will be assessed an annual abeyance fee of $300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879.

Refund Schedule for Standard Fee Schedule

The AAA offers a refund schedule on filing fees connected with the Standard Fee Schedule. For cases with claims up to $75,000, a minimum filing fee of $350 will not be refunded. For all other cases, a minimum fee of $600 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

> 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.

> 50% of the filing fee, will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing.

> 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three-arbitrator panel). No refunds will be granted on awarded cases.

Note: The date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

Flexible Fee Schedule

A non-refundable Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. Upon receipt of the Demand for Arbitration, the AAA will promptly initiate the case and notify all parties as well as establish the due date for filing of an Answer, which may include a Counterclaim. In order to proceed with the further administration of the arbitration and appointment of the arbitrator(s), the appropriate, non-refundable Proceed Fee outlined below must be paid.

If a Proceed Fee is not submitted within ninety (90) days of the filing of the Claimant's Demand for Arbitration, the Association will administratively close the file and notify all parties.

No refunds or refund schedule will apply to the Filing or Proceed Fees once received.

The Flexible Fee Schedule below also may be utilized for the filing of counterclaims. However, as with the Claimant's claim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.

A Final Fee will be incurred for all claims and/or counterclaims that proceed to their first hearing. This fee will be payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified of a cancellation at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

All fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Proceed Fee	Final Fee
Above $0 to $10,000	$400	$475	$200
Above $10,000 to $75,000	$625	$500	$300
Above $75,000 to $150,000	$850	$1250	$750
Above $150,000 to $300,000	$1,000	$2125	$1,250
Above $300,000 to $500,000	$1,500	$3,400	$1,750
Above $500,000 to $1,000,000	$2,500	$4,500	$2,500
Above $1,000,000 to $5,000,000	$2,500	$6,700	$3,250
Above $5,000,000 to $10,000,000	$3,500	$8,200	$4,000
Above $10,000,000	$4,500	$10,300 plus .01% of claim amount over $10,000,000 up to $65,000	$6,000
Nonmonetary[4]	$2,000	$2,000	$1,250
Deficient Claim Filing Fee	$350		
Additional Services[5]			

[4] *This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of $3,500 and a proceed fee of $8,200.*

[5] *The AAA reserves the right to assess additional administrative fees for services performed bythe AAA beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.*

For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879. All fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are $1,000 for the Initial Filing Fee; $2,125 for the Proceed Fee; and $1,250 for the Final Fee.

Under the Flexible Fee Schedule, a party's obligation to pay the Proceed Fee shall remain in effect regardless of any agreement of the parties to stay, postpone or otherwise modify the arbitration proceedings. Parties that, through mutual agreement, have held their case in abeyance for one year will be assessed an annual abeyance fee of $300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

Note: The date of receipt by the AAA of the demand for arbitration will be used to calculate the ninety (90) day time limit for payment of the Proceed Fee.

There is no Refund Schedule in the Flexible Fee Schedule.

Hearing Room Rental

The fees described above do not cover the cost of hearing rooms, which are available on a rental basis. Check with the AAA for availability and rates.